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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 SECURITIES AND EXCHANGE COMMISSION,

16 Plaintiff,

17 v.

18 PETER C. SON, JIN K. CHUNG,
19 SNC ASSET MANAGEMENT, INC., and
20 SNC INVESTMENTS, INC.,

21 Defendants.

Case No. CV-09-2554 MMC

PLAINTIFF'S STATEMENT IN
SUPPORT OF PRELIMINARY
INJUNCTION

DATE: June 22, 2009

TIME: 3:00 p.m.

PLACE: Courtroom 7, 19th Floor

I. INTRODUCTION

Plaintiff Securities and Exchange Commission (the “Commission”) submits this statement to provide the Court with information developed since the entry of the Temporary Restraining Order on June 10, 2009, and to describe how the evidence previously submitted by the Commission satisfies the legal standard for granting a preliminary injunction.

II. PROCEDURAL HISTORY

On June 9, 2009, the Commission filed a complaint against defendants Peter C. Son, Jin K. Chung, SNC Asset Management, Inc. (“SNCA”), and SNC Investments, Inc. (“SNCI”) alleging violations of the federal securities laws. *See* Docket No. 1. Along with the filing of the complaint, the Commission filed an *ex parte* application for a temporary restraining order and a memorandum of points and authorities and other supporting documentation (collectively, the “Application”). *See* Docket Nos. 3-7. On June 10, 2009, the Court granted the Commission’s requested relief (the “TRO”). *See* Docket No. 14. The Court also issued an Order to Show Cause (the “OSC”) why the Court should not enter a preliminary injunction that extends the equitable relief granted by the Court to the duration of the litigation and set a hearing for June 22, 2009, at 3:00 p.m. *See* Docket No. 15.

III. ADDITIONAL FACTS

At the Commission’s request, Son, SNCA, and SNCI waived service of the summons and complaint. *See* Eme Decl. ¶ 3; Docket Nos. 16-18. The Commission has spoken with counsel for Son, SNCA, and SNCI, who has indicated that they will stipulate to the entry of a preliminary injunction. *See id.* The Commission intends to file the stipulation with the Court as soon as practicable (and, in any event, before the June 22 hearing).

Following the entry of the TRO and the OSC, the Commission attempted to provide notice of the Court’s orders to Chung, whom the Commission believes is currently in the Republic of Korea (South Korea). *See* Eme Decl. ¶ 4. The Commission had no contact during its investigation with Chung or any counsel acting on his behalf. *See* Tashjian Decl. ¶ 5 (Docket No. 6). The Commission has attempted to deliver copies of the TRO and OSC to Chung in South Korea, but has not yet received confirmation that Chung received the

documents. *See* Eme Decl. ¶¶ 5-10. The Commission believes, however, that it may be able to show that Chung received actual notice of the Court's orders with additional time. *See id.* ¶ 11.

IV. ARGUMENT

A. The Commission Has Satisfied the Requirements for a Preliminary Injunction

Upon a "proper showing" that defendants have violated the federal securities laws, the Commission may obtain a "permanent or temporary injunction or restraining order" without bond. *See* 15 U.S.C. § 77t(b); 15 U.S.C. § 78u(d); Mem. at 12-14 (Docket No. 4). A preliminary injunction enjoining violations of the securities laws is appropriate upon a showing of *either*: (1) a likelihood of success on the merits and the possibility of irreparable injury; *or* (2) serious questions going to the merits and the balance of hardships tipping sharply in the Commission's favor. *See Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 917 (9th Cir. 2003) (*en banc*). The Commission is not required to prove irreparable injury or the inadequacy of legal remedies, as may be required of a private litigant moving pursuant to the Federal Rules of Civil Procedure. *Cf.* FED. R. CIV. P. 65(b)(2). Instead, because the Commission is bringing this action pursuant to its statutory mandate to safeguard the public interest and to enforce the federal securities laws, irreparable injury is presumed. *See United States v. Odessa Union Warehouse Co-Op*, 833 F.2d 172, 175-76 (9th Cir. 1987) (ruling that irreparable injury is presumed when federal agency charged with enforcement responsibility brings action for injunctive relief); *Navel Orange Admin. Comm. v. Exeter Orange Co.*, 722 F.2d 449, 453 (9th Cir. 1983) (same); *cf. Miller ex rel. NLRB v. Cal. Pac. Med. Ctr.*, 19 F.3d 449, 459 (9th Cir. 1994) (ruling that irreparable injury presumed when agency make sufficient showing of likelihood of success).

As set forth in the Commission's memorandum of points and authorities in support of the Application, the Commission is likely to succeed on the merits of its claim. *See* Mem. at 14-17. The evidence submitted by the Commission supports the conclusion that Son, Chung, SNCA, and SNCI violated the antifraud provisions of the federal securities laws by

1 making materially false and misleading statements in the offer and sale of securities and in
 2 connection with the purchase or sale of securities, misappropriating client assets, and
 3 perpetrating a fraud on his advisory clients. *Id.*

4 Indeed, the Court has already found that: (1) the Commission demonstrated a
 5 likelihood of success on the merits; (2) good cause exists to believe that the defendants have
 6 engaged in conduct that violates the federal securities laws; and (3) good cause exists to
 7 believe that immediate and irreparable injury will occur with respect to investor funds. *See*
 8 TRO ¶¶ 4-6. Thus, in issuing the TRO, the Court has thus already applied the legal standard
 9 for granting a preliminary injunction to the facts of this case and determined that defendants
 10 must show cause why a preliminary injunction should not be issued. *See id.*; *see* OSC.

11 **B. The Court Should Enter the Preliminary Injunction Against Son, SNCA,**
 12 **and SNCI and Extend the TRO Against Chung**

13 The Court may issue a preliminary injunction “only on notice to the adverse party.”
 14 FED. R. CIV. P. 65(a)(1); *see* FED. R. CIV. P. 65(d)(2) (providing that an injunctive order binds
 15 only those with “actual notice”). Three of the four defendants—Son, SNCA and SNCI—have
 16 received actual notice of the TRO and OSC and indicated that they will stipulate to the entry
 17 of a preliminary injunction. *See* Eme Decl. ¶ 3.

18 The Commission has attempted to notify the fourth defendant, Chung, of the Court’s
 19 orders and believes that additional time may prove fruitful. *See* Eme Decl. ¶¶ 5-11. The
 20 Court, for good cause shown, may extend the TRO for 10 days past its expiration date. FED.
 21 R. CIV. P. 65(b)(2). Here, the Court ordered that the TRO would expire on June 24, 2009.
 22 *See* TRO at 5 (citing FED. R. CIV. P. 6(a)(2) and 65(b)(2)). The Commission requests that the
 23 Court extend the TRO until no earlier than July 9, 2009, to allow the Commission time to
 24 provide Chung with notice of the TRO and OSC.

25 **IV. CONCLUSION**

26 For the reasons set forth by the Commission in the Application, and for the reasons
 27 described above, the Commission respectfully requests that this Court enter the proposed
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1 preliminary injunction against Son, SNCA, and SNCI, and extend the terms of the TRO
2 against Chung for an additional 10 days.

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4 DATED: June 17, 2009

Respectfully submitted,

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6
7 /s/ Robert L. Tashjian

ROBERT L. TASHJIAN

8 Attorney for Plaintiff

9 SECURITIES AND EXCHANGE
10 COMMISSION
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